



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-1004; FRL-9617-8]

**Approval and Promulgation of Air Quality Implementation Plans; State of Colorado;
Motor Vehicle Inspection and Maintenance Program – Deletion of Final Enhanced
Inspection and Maintenance Emission Cutpoint Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado on August 8, 2006. The August 8, 2006 revision updates Regulation Number 11, “Motor Vehicle Emissions Inspection Program,” by removing the light duty vehicle emission testing limits that went into effect on January 1, 2006 for 1996 and newer model year vehicles. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-1004, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions for submitting comments.
- E-mail: russo.rebecca@epa.gov.
- Mail: Carl Daly, Director, Air Program, Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- Fax: (303) 312-6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Hand Delivery: Carl Daly, Director, Air Program, Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2011-1004.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional

information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rebecca Russo, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number (303) 312-6757, fax number (303) 312-6064, or email russo.rebecca@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, the following definitions apply:

- (i) The word Act or initials CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials NAAQS mean national ambient air quality standard.
- (iv) The initials ppb mean parts per billion.
- (v) The initials SIP mean or refer to State Implementation Plan.
- (vi) The words State or Colorado mean the State of Colorado, unless the context indicates otherwise.

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I. General Information

What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the

information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. What is the Purpose of this Action?

In this action, EPA is proposing to approve a revision to Colorado's Regulation Number 11 (hereafter "Regulation No. 11"), "Motor Vehicle Emissions Inspection Program." This revision would remove the light duty vehicle emission testing limits (or "cutpoints") that went into effect on January 1, 2006 (hereafter referred to as the "2006 cutpoints") for 1996 and newer

model year vehicles.¹ The emission testing limits that went into effect on January 1, 2003 under Regulation No. 11 (hereafter referred to as the “2003 cutpoints”) would continue to be federally enforceable if we approve this revision. Under Regulation No. 11, a vehicle whose emissions exceed the applicable emissions cutpoints during an IM240 emissions test will fail the test and must be repaired and re-inspected.²

The 2006 cutpoints are 0.60 grams per mile for hydrocarbons (HC), 10.0 grams per mile for carbon monoxide (CO), and 1.5 grams per mile for oxides of nitrogen (NOx). The 2003 cutpoints are 1.2 grams per mile for HC, 20 grams per mile for CO, and 3.0 grams per mile for NOx. We have determined, and provide our rationale for our determination below, that it is reasonable for the State to remove the 2006 cutpoints from Regulation No. 11. If we approve this revision to Regulation No. 11, it will become part of the federally enforceable SIP for Colorado under the Clean Air Act (CAA).

III. What is the State’s Process to Submit SIP Revisions to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to us.

¹ We note that the State never implemented the 2006 cutpoints. However, EPA approved them as part of Regulation No. 11, and they have been federally enforceable.

² A motor vehicle inspection and maintenance (I/M) program is a control measure that is sometimes used in SIPs to reduce emissions of certain air pollutants. Today’s cars are dependent on properly functioning emission control systems to keep pollution levels low. I/M programs can identify problem cars and ensure that cars are properly maintained. Through Regulation No. 11, the state of Colorado operates an enhanced I/M program, relying mainly on an IM240 inspection test. The IM240 test is a chassis dynamometer test used for emission testing of light duty vehicles. It is a short, 240 second test representing a 1.96 mile route. Under Regulation No. 11, a vehicle whose emissions exceed the applicable emissions cutpoints during an IM240 emissions test will fail the test and must be repaired and re-inspected. Colorado operates an enhanced, IM240 test program in the following counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson (Denver metropolitan area). In addition, the State operates an enhanced program in Larimer and Weld Counties, but as a State-only (not Federally enforceable) requirement.

The Colorado Air Quality Control Commission (AQCC) held a public hearing on the revision to Regulation No. 11 on November 17, 2005. The AQCC adopted the revision to Regulation No. 11 directly after the hearing. This SIP revision became State effective on March 2, 2006, and the Governor submitted it to us on August 8, 2006.

We have evaluated the Governor's submittal for Regulation No. 11 and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

IV. EPA's Evaluation of the State's August 8, 2006 Submittal

We have reviewed the revision to Regulation No. 11 that the State submitted on August 8, 2006 and find that our approval is warranted. We note that we are only acting on the State's revision to Regulation No. 11, Part F "Maximum Allowable Emissions Limits for Motor Vehicle Exhaust, Evaporative and Visible Emissions for Light-Duty and Heavy Duty Vehicles," section III.A.2. On August 17, 2007, EPA approved other revisions to Regulation No. 11 that the State had adopted on November 17, 2005 (see 72 FR 46148). We describe the basis for our proposed approval below:

Basis for EPA's proposed approval: the State did not need the 2006 cupoints to attain the 1997 8-hour (80 ppb) ozone NAAQS.

The metro-Denver/North Front Range ("NFR") area was designated as nonattainment for the 1997 8-hour (80 ppb) ozone NAAQS on November 20, 2007 (see 72 FR 53952, September 21, 2007). As a result of this nonattainment designation, Colorado was required to submit a dispersion modeled attainment demonstration that demonstrated attainment of the ozone NAAQS by the end of the ozone season in 2010. The State submitted a dispersion modeled attainment demonstration SIP revision on June 18, 2009 that demonstrated attainment by the end of the

2010 ozone season. EPA approved the State's June 18, 2009 SIP revision on August 5, 2011 (see 76 FR 47443). In its attainment demonstration for the 80 ppb 8-hour ozone NAAQS, the State modeled the 2003 cutpoints, not the 2006 cutpoints. We also note that monitored ambient air quality data from 2008 through 2010 reflect that the metro-Denver/NFR area attained the 80 ppb 8-hour ozone NAAQS in 2010 without the implementation of the 2006 cutpoints.³ In addition, based on preliminary 8-hour ozone data from 2011, the area continues to demonstrate attainment of the 80 ppb 8-hour ozone NAAQS.

Because the 2006 cutpoints have not been necessary for the area to attain the 80 ppb 8-hour ozone NAAQS, we are proposing to approve the State's removal of the 2006 cutpoints from Regulation No. 11.

V. Consideration of Section 110(1) of the Clean Air Act

Section 110(1) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. EPA has concluded that the above-described revision to Regulation No. 11 will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA. This revision to Regulation No. 11 will not adversely affect the approved maintenance plans for Metro-Denver and Longmont for carbon monoxide (see 72 FR 46148, August 17, 2007), Metro-Denver for PM₁₀ (see 72 FR 62571, November 6, 2007), or Greeley for carbon monoxide (see 70 FR 48650), or the approved attainment plan for Metro-Denver/NFR for the 1997 8-hour (80 ppb) ozone standard (see 76 FR 47443, August 5, 2011). For each of these areas and pollutants, the State demonstrated maintenance or attainment of the relevant NAAQS assuming either the complete absence of an I/M program or the implementation of the 2003 cutpoints.

³ The State never implemented the 2006 cutpoints.

VI. Proposed Action

EPA is proposing approval of the revision to Regulation No. 11 that the State of Colorado submitted on August 8, 2006. The revision removes from Regulation No. 11, Part F, section III.A.2, the light duty vehicle emission testing limits that went into effect on January 1, 2006.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks

subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 21, 2011.

James B. Martin
Regional Administrator
Region 8

Publication Date: 01/12/2012]

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